



that respondent had violated 14 C.F.R. 91.131(a)(1) and 91.13(a).<sup>2</sup> We deny the appeal.

Respondent was the pilot-in-command of a Beech Baron 58 on a visual flight rules (VFR) flight from Norwood, MA to Yarmouth, Nova Scotia. Shortly after takeoff from Norwood Airport, respondent entered the Class B airspace of Boston's Logan International Airport,<sup>3</sup> and according to uncontested evidence introduced by the Administrator, was in that airspace for approximately 10-15 minutes, continuously traveling in a northeasterly direction. Tr. at 17-18. Respondent communicated with one controller after takeoff, but he was already out of that controller's sector of authority and that controller had no authority to issue a clearance through the Class B airspace. According to respondent, he was unable to reach ATC on other frequencies that he tried until he reached 8,500 feet and was well into the Class B airspace.

Because respondent admitted the airspace violation and carelessness charges, the issue before the law judge was the propriety of the proposed sanction. Respondent offered mitigating circumstances in the form of his belief that he tried

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<sup>2</sup>Section 91.131(a)(1) prohibits operation of an aircraft within Class B airspace (previously called a terminal control area) without prior air traffic control (ATC) authorization to do so. Section 91.13(a) prohibits operation of an aircraft in a careless or reckless manner so as to endanger the life or property of another.

<sup>3</sup>Norwood Airport is approximately 13 miles southwest of Logan. Tr. at 16 and Exhibit A-1 New York Sectional aeronautic chart.

constantly to reach ATC, and that the controller with whom he spoke when first airborne had a duty to forewarn him of the airspace violation. But respondent also testified that, once airborne, he assumed he would be able to get the proper controller, who would give him the appropriate vectors for the area. The law judge rejected these arguments, finding that respondent was careless and did not take the proper steps to familiarize himself with the Boston area.

On appeal, respondent reiterates his belief that ATC's lack of advice should mitigate the sanction. He also argues that the FAA "suppressed" other tape evidence that would have shown his many attempts to reach ATC,<sup>4</sup> and that he was led to believe by the FAA that his obtaining his commercial pilot's certificate after the incident (at the time he had a private pilot certificate) would support a sanction reduction. Finally, respondent is concerned that his testimony, elicited by the FAA on cross-examination, regarding other Federal Aviation Regulation violations should not be considered in determining sanction.

Although it may be that the approach controller could have lessened the duration or severity of this incident by advising respondent of his position,<sup>5</sup> this factor does not warrant reducing respondent's suspension to less than 90 days.

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<sup>4</sup>The Administrator had provided respondent with copies of ground and tower communications, as well as his initial call to approach control.

<sup>5</sup>The Administrator's witness testified that respondent was in Class B airspace when the conversation occurred.

Respondent was already in (or on the edge of, according to his testimony) Class B airspace. He took off without VFR charts, and had never flown in the area. Tr. at 38. In respondent's own words:

A few times I thought, gee, I may be getting close to Boston's airspace, and I actually did turn the airplane more north bound than northeast bound several times because I was concerned about where I was and I wasn't able to raise the proper controller for the area . . . . I never tried to deny that it was dangerous, that it was careless on my part. I realize that it was . . . . I can see that [it] was an error, to expect that somebody else somehow was going to guide my flight. I needed to know exactly where I was and where air space began, and what the altitudes for that air space were . . . .

Tr. at 35-36.

We agree with the law judge that this was egregious conduct for any pilot. Taking off without necessary familiarization and without proper charts into an obviously congested airspace such as the Boston area, and continuing the flight after failing to obtain a clearance obviously justified a finding of carelessness, at a minimum. Even an assumption that further FAA tapes would show that respondent made multiple attempts to reach ATC would not lessen the seriousness of his actions.<sup>6</sup> Nor does his upgraded certificate warrant a sanction less than 90 days.

Accord Administrator v. Scroggins, NTSB Order EA-3466 (1992).

This sanction is based solely on the flight that is the subject of the Administrator's complaint, and does not consider respondent's prior violation history.

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<sup>6</sup>There is, in any event, no basis in the record to conclude that any tapes or other evidence were mishandled or concealed by the FAA.

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Respondent's appeal is denied; and
2. The 90-day suspension of respondent's commercial pilot certificate shall begin 30 days from the date of service of this order.<sup>7</sup>

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.

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<sup>7</sup>For the purposes of this order, respondent must physically surrender his certificate to an appropriate representative of the FAA pursuant to FAR section 61.19(f).